

The Appeals Board finds the Order of the Administrative Law Judge should be affirmed. Claimant alleges accidental injury on May 6, 1996, with a worsening of his condition through April 22, 1997. Respondent does not dispute the May 6, 1996, injury but alleges that claimant's April 1997 low back injury resulted from claimant handling timbers

at his home. Claimant denies he had any involvement with timbers, attesting that he has no timbers at his house. Claimant alleges the condition simply worsened as a result of the job activities and the constant bouncing in a truck.

Claimant received chiropractic treatment from Dr. Jerry Bryan in May 1996 after the initial injury. Claimant again had chiropractic treatments in September 1996 and again beginning April 23, 1997. Claimant alleges in between those dates he took over-the-counter medications for the pain symptoms.

While claimant's employer, Harold Schwien, and his wife, Bobbie Schwien, both contend that claimant spoke of an alternate cause, the claimant denies having the timbers at his house and denies advising the Schwiens of those circumstances.

The Appeals Board finds, for the purpose of preliminary hearing, that claimant has proven accidental injury arising out of and in the course of his employment through April 22, 1997. The Appeals Board acknowledges additional testimony may be elicited regarding this issue as it was heavily contested at the preliminary hearing with several deposition transcripts placed into evidence.

The Appeals Board finds, for preliminary hearing purposes, that claimant's testimony is sufficiently persuasive to cause the Appeals Board to grant benefits at this time.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Kenneth S. Johnson dated August 19, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1997.

BOARD MEMBER

c: M. John Carpenter, Great Bend, KS
James M. McVay, Great Bend, KS
Kenneth S. Johnson, Administrative Law Judge
Philip S. Harness, Director